

**ORDINANCE**

**CITY OF NEW ORLEANS**

**CITY HALL: February 21, 2019**

**CALENDAR NO. 32,575**

**NO. \_\_\_\_\_ MAYOR COUNCIL SERIES**

**BY: COUNCILMEMBER  BANKS (BY REQUEST)**

**AN ORDINANCE** to authorize the Mayor of the City of New Orleans to enter into a Cooperative Endeavor Agreement between the City of New Orleans (the "City") and the State of Louisiana to allow and facilitate the planning and construction of a new Sewerage and Water Board Power Plant at its Carrollton Campus, as more full set forth in the Cooperative Endeavor Agreement form attached hereto and made a part hereof; and otherwise to provide with respect thereto.

**WHEREAS**, pursuant to the authority contained in Article 7, Section 14(C) of the Louisiana Constitution of 1974, and statutory authority supplemental thereto, the State of Louisiana and its political subdivisions, including the City, may enter into cooperative endeavors with each other, or with any public or private corporation or individual; and further pursuant to section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with any public or private association, corporation or individual for activities in support of economic growth and other public purposes; and

**WHEREAS**, the City desires to allow and facilitate the planning and construction of a new Sewerage and Water Board Power Plant at its Carrollton Campus; and

**WHEREAS**, the City and the State of Louisiana desire to enter into this Agreement to provide for the implementation of the foregoing and to set forth certain other matters in

connection therewith; **NOW, THEREFORE**

1           **SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY**  
2   **ORDAINS**, That the Mayor of the City of New Orleans is hereby authorized to enter into a  
3   Cooperative Endeavor Agreement between the City of New Orleans and the State of Louisiana to  
4   allow and facilitate the planning and construction of a new Sewerage and Water Board Power  
5   Plant at its Carrollton Campus.

1           **SECTION 2.** That said Cooperative Endeavor Agreement is attached hereto as “Exhibit  
2   1” and made a part hereof.

**ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS** \_\_\_\_\_

\_\_\_\_\_  
**PRESIDENT OF THE COUNCIL**

**DELIVERED TO THE MAYOR ON** \_\_\_\_\_

**APPROVED:**

**DISAPPROVED:** \_\_\_\_\_

\_\_\_\_\_  
**MAYOR**

**RETURNED BY THE MAYOR ON** \_\_\_\_\_ **AT** \_\_\_\_\_

\_\_\_\_\_  
**CLERK OF COUNCIL**

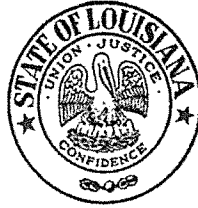
**ROLL CALL VOTE:**

**YEAS:**

**NAYS:**

**ABSENT:**

**RECUSED:**



**COOPERATIVE ENDEAVOR AGREEMENT BETWEEN  
THE STATE OF LOUISIANA and  
CITY OF NEW ORLEANS  
New Sewerage and Water Board Power Plant, Planning and Construction  
(Orleans)  
FP&C Project No. 50-ML3-18-02**

In accordance with Article VII, Section 14 of the 1974 Constitution of the State of Louisiana (Constitution), the **STATE OF LOUISIANA** (State), herein represented by **MARK A. MOSES, DIRECTOR, OFFICE OF FACILITY PLANNING AND CONTROL (FP&C) OF THE DIVISION OF ADMINISTRATION (DOA)**, and **CITY OF NEW ORLEANS** (Entity), a political subdivision of the State, herein represented by **LATOYA CANTRELL, MAYOR** do hereby enter into a Cooperative Endeavor Agreement (Agreement) to serve the public for the purposes hereinafter declared.

**ARTICLE I**

**1.1 WHEREAS**, the Capital Outlay Act (Act), adopted in accordance with Article VII, Section 6 of the Constitution, is the comprehensive capital outlay budget required by said Article VII, Section 6, and contains an appropriation for the Entity for the Project Number and Project Description (Project) as set forth in **Exhibits A and B**, attached hereto and made a part hereof; and

**1.2 WHEREAS**, the Omnibus Bond Act of the Louisiana Legislature (OBA), adopted in accordance with Article VII, Section 6 of the Louisiana Constitution of 1974, provides for the issuance by the State Bond Commission of State General Obligation Bonds for certain of the projects contained in the Act, including the Project, which bonds are to be secured by a pledge of the full faith and credit of the State, as well as by monies dedicated to and paid into the Security and Redemption Fund as provided in Article VII, Section 9 of the Constitution, which authorization includes the issuance, **if applicable**, of State General Obligation Bonds for the Project (Project Bonds) as set forth in **Exhibit B**, attached hereto and made a part hereof; and

**1.3 WHEREAS**, **if applicable**, the Entity has supplied the State with evidence of the availability and commitment of Local, Federal or Non-State Matching Funds for the Project, as set forth in **Exhibit A**; and

**1.4 WHEREAS**, the State appropriated State General Fund (Direct) or other sources of cash for the Project or the Bond Commission did grant a cash line of credit and/or a non-cash line of credit for the Project in the amount(s) as stated in **Exhibit B**; and

**1.5 WHEREAS**, the Act provides that all of the funds appropriated, in the absence of express language to the contrary, shall be considered as having been appropriated directly to FP&C and shall be administered by FP&C under Cooperative Endeavor Agreements;

**IT IS HEREBY AGREED** by the State and the Entity that:

**ARTICLE II  
PURPOSE**

**2.1** The purpose of this Agreement is to set forth the terms of administering the Project by FP&C. FP&C will administer this Project in accordance with the Non-State Entity Capital Outlay Administrative Guidelines, July 1999 ed., which is hereby made a part of this Agreement.

**ARTICLE III  
SCOPE**

**3.1** As provided in the Act, the State funds for this Project are limited to capital improvements for the Project, in the Parish, and in the amounts set forth in **Exhibits A and B**.

**3.2** If the Entity enters into a contract prior to receipt of funding and prior to execution of a Cooperative Endeavor Agreement, then payments under such contracts are prohibited from capital outlay appropriations and are the sole responsibility of the Entity.

**3.3** The Entity hereby acknowledges and confirms that this Project constitutes a **Public Purpose** and will fulfill a public need within the parish in which the Project is to be located, all in accordance with Article VII, Section 14 of the Constitution.

3.4 Allowable costs shall not include the operating expenses of the Entity. In no case shall the total of any of the allowable costs exceed the corresponding amount shown in **Exhibit A**.

#### **ARTICLE IV** **USE OF FUNDS**

4.1 The Entity hereby acknowledges and agrees that the funds provided by the State to the Entity shall be used solely for the purposes authorized and permitted in the Act and in accordance with all provisions of law affecting the Project, as well as the constitutional and statutory restrictions on the use of State funds for public purposes. The Entity acknowledges that any funds not used in accordance with the terms of this Agreement and state law will be reimbursed to the State.

4.2 The Entity shall not execute any contracts or agreements that would expend or commit State funds in excess of the amount for which lines of credit were granted pursuant to the Act. The Entity shall be solely responsible for any amount that exceeds the amount appropriated by the State.

4.3 If the Project is authorized to be funded through the issuance of Project Bonds, the Entity shall not take any action which would have the effect of impairing the tax exempt status of the Project Bonds. The Entity agrees that the proceeds will not be used directly or indirectly in any trade or business carried on by any person other than a governmental unit. The Entity further agrees that the proceeds will not be used directly or indirectly to provide a facility used by any person other than the Entity pursuant to a management contract, requirements contract or other arrangement granting, directly or indirectly, an interest in such facility to a person other than the Entity, unless the State receives an opinion from a nationally recognized bond counsel that such contract will not adversely affect the tax-exempt status of the Project Bonds.

4.4 The Entity shall make no changes in its local laws or charter which would allow use of the Project for any purpose other than a public purpose.

#### **ARTICLE V** **ADMINISTRATIVE COSTS**

5.1 Notwithstanding any provision of this contract to the contrary, FP&C may use up to six percent of each State fund line item contained herein for costs associated with administering the Project, all in accordance with the provisions of the Act.

#### **ARTICLE VI** **PUBLIC BID LAWS**

6.1 The Entity will solicit bids for the services, labor and materials needed to construct said Project in accordance with the public bid laws of the State, including, but not limited to R.S. 38:2211, *et seq.*, applicable to political subdivisions of the State. The Entity will also keep a procurement file relative to the necessary acquisition of services, labor and materials needed to complete said Project which will be subject to review by the State at any time.

#### **ARTICLE VII** **COORDINATION**

7.1 It is the responsibility of the Entity to administer the Project according to all applicable laws, rules and regulations and to ensure that the work is the best obtainable within established trade practice. The submittal of documentation to FP&C as required by this Agreement shall be for the purpose of verifying that the funds are spent in accordance with this Agreement and the applicable legislation, providing evidence of the progress of the Project and verifying that such documentation is being produced. FP&C will not provide extensive document review for the Project or take the responsibility for determining whether or not this documentation is complete and accurate.

7.2 The participation by FP&C in the Project shall in no way be construed to make FP&C a party to any contract between the Entity and its contractors.

#### **ARTICLE VIII** **CHANGE ORDERS**

8.1 A change order for the Project shall be subject to the approval of FP&C. However, as per R.S. 39:126, one or more change orders that cause an excess in the aggregate of *One Hundred Thousand Dollars (\$100,000)*, increase or decrease, per month shall also require the approval of the Joint Legislative Committee on the Budget and the Commissioner of Administration or his designee. Any change order in excess of fifty thousand dollars but less than

one hundred thousand dollars shall be submitted to the Joint Legislative Committee on the Budget for review but shall not require committee approval.

#### **ARTICLE IX** **HOLD HARMLESS AND INDEMNITY**

9.1 The Entity agrees and obligates itself, its successors and assigns to defend, indemnify and save harmless and provide a defense for the State, its officials, officers and employees against any and all claims, demands, suits, actions (*ex contractu, ex delictu*, quasi-contractual, statutory or otherwise), judgments of sums of money, attorneys fees and court costs to any party or third person including, but not limited to amounts for loss of life or injury or damage to persons, property or damages to contractors, subcontractors, suppliers, laborers or other agents or contractors of the Entity or any of the above, growing out of, resulting from or by reason of any violation of the requirements of the Act and OBA or any other State law, or any negligent act or omission, operation or work of the Entity, its employees, servants, contractors or any person engaged upon or in connection with the engineering services, construction and construction engineering required or performed by the Entity hereunder including, but not limited to any omissions, defects or deficiencies in the plans, specifications or estimates, or by virtue of any extra work, delays, disruptions, inefficiencies or nonpayment of any engineering, construction or construction engineering cost incurred, or any other claim of whatever kind or nature arising from, out of or in any way connected with the Project, to the extent permitted by law.

9.2 Nothing herein is intended, nor shall be deemed to create a third party beneficiary to or for any obligation by FP&C herein or to authorize any third person to have any action against FP&C arising out of this Agreement.

#### **ARTICLE X** **DISBURSEMENT OF FUNDS**

10.1 After execution of this Agreement in accordance with the terms hereof and the Act, the State, through FP&C, shall provide the Entity, identified under the Federal Tax Identification Number as set forth on **Exhibit A**, with funds on an *as-needed* basis as approved by FP&C, but not to exceed the total Capital Outlay Cash, less Escrow and FP&C Administration fee, as set forth in **Exhibit A**. **The Entity shall not be entitled to reimbursement of any expenditures made prior to the issuance of a cash line of credit or receipt of cash funding.**

10.2 If the Project is authorized to be funded through the issuance of Project Bonds, the Entity agrees to use its best efforts to expend all of the funds subject to this Agreement within two (2) years from the date of the issuance of the Bonds. FP&C agrees that it will notify the Entity of the date the Bonds are issued within one (1) month from the issuance thereof. The Entity understands and agrees that if the funds subject to this Agreement are not totally expended within two (2) years from the issuance of the Bonds, FP&C can close the Project and recommend that the Legislature reallocate any unexpended proceeds to other projects.

10.3 The Entity recognizes and agrees that the receipt of the State monies is contingent upon the receipt, pledge and expenditure of Local/Federal Matching Funds by the Entity in the amount stated in **Exhibit A**. The Entity acknowledges and agrees that the requisite amount of matching funds has been received, pledged, and/or expended on the Project.

10.4 In the event funds subject to this Agreement represent a non-cash line of credit as set forth in **Exhibit A**, the Entity understands that the funds so designated represent a non-cash line of credit and that no monies can be withdrawn from the Treasury for the non-cash line of credit unless and until the Bond Commission has either issued bonds or a cash line of credit therefor, and the Agreement is amended to provide for the disbursement thereof.

#### **ARTICLE XI** **OWNERSHIP OF PROPERTY**

11.1 The Entity hereby covenants that it owns, will acquire title to, or obtain servitudes for the property upon which the Project is to be located and that it shall not, while any of the Project Bonds remain outstanding, or during the term of this Agreement, transfer, convey, sell, mortgage, assign or otherwise alienate its ownership or servitude rights in the land or real property and appurtenances which constitute the Project. Projects to be located by permits on existing property of the State or a political subdivision of the State are exempt from these ownership requirements.

#### **ARTICLE XII** **INSURANCE**

12.1 If State funds for this project are used in whole or in part towards construction of fixed insurable improvements, then upon completion of construction, the Entity shall, for the term of this agreement, maintain or cause to be maintained property insurance issued by a company or companies admitted to do business in the State of Louisiana, in an amount equal to 100% of the replacement cost of such improvements.

12.2 If the property is located in a Special Flood Hazard Area, flood insurance equal to 100% of the value of the building or up to a minimum of \$500,000 as allowed by National Flood Insurance Program (NFIP) shall be obtained on this property. This includes properties shown on a Flood Insurance Rate Map (FIRM) issued by FEMA as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE,V, ZM, or E.

#### **ARTICLE XIII** **PLEDGE OF LEASE REVENUES**

13.1 If the Project is authorized to be funded through the issuance of Project Bonds, the Entity hereby covenants and agrees that it shall not, while any portion of the Project Bonds issued by the State to fund the Project remain outstanding, enter into any agreement or otherwise covenant to directly pledge to the State any lease revenues from any lessee, its successors or assigns, for the payment of principal, interest or other requirements with respect to the Project Bonds, nor shall the Entity deposit any such lease revenues into the Bond Security and Redemption Fund of the State.

#### **ARTICLE XIV** **TERM**

14.1 The provisions of this Agreement shall be effective from the date of execution hereof and shall be binding upon all parties and shall remain in effect until FP&C determines that the project(s) for which funds are appropriated is completed or for as long as any Bonds issued for the Project, or any refunding bonds therefore, remain outstanding.

#### **ARTICLE XV** **TERMINATION**

15.1 FP&C may terminate this Agreement for cause based upon the failure of Entity to totally spend all funds subject to this agreement within two years from the execution of this agreement or, if applicable, within two years from the issuance of any bonds or for any act by the Entity that the State determines to be illegal.

15.2 FP&C may terminate this Agreement at any time without penalty by giving thirty (30) days written notice to the Entity of such termination. Entity shall be entitled to payment for deliverables in progress to the extent work has been approved by FP&C and subject to the availability of funds.

#### **ARTICLE XVI** **AVAILABILITY OF FUNDS**

16.1 The availability of funds set forth in the attached Exhibit A are subject to and contingent upon appropriation of funds by the legislature and, if applicable, issuance of a line of credit by the State Bond Commission.

#### **ARTICLE XVII** **ASSIGNMENT**

17.1 Entity shall not assign any interest in this contract and shall not transfer any interest in same (whether by assignment or novation), without prior written consent of the FP&C.

#### **ARTICLE XVIII** **AUDIT**

18.1 As provided in the Act, the Entity agrees to comply with the provisions of R.S. 24:513. The Act provides that no funds shall be released or provided to the Entity if, when and for as long as the Entity fails or refuses to comply with R.S. 24:513.

18.2 The Entity shall maintain appropriate financial records, and the State reserves the right to audit these records or require the Entity to provide an audit at any time.

18.3 The Entity agrees to comply with the provisions of La. R.S 24:513 (H)(2)(a) and shall designate an individual who shall be responsible for filing annual financial reports with the legislative auditor and shall notify the legislative auditor of the name and address of the person so designated.

#### **ARTICLE XIX** **REQUIRED MATCH**

19.1 Pursuant to LA R.S. 39:112(E)(2), Entity agrees to provide a match of not less than twenty-five (25) percent of the total requested amount of funding except as provided in LA R.S. 39:112(E)(2)(a) or (b).

**ARTICLE XX**  
**AMENDMENT OF AGREEMENT**

20.1 Any alteration, variation, modification, or waiver of provisions of this Agreement shall be valid only when they have been reduced to writing, duly signed. No amendment shall be valid until it has been executed by all parties.

THUS DONE AND SIGNED, this \_\_\_\_\_ day of \_\_\_\_\_, 201<sup>9</sup>~~8~~,  
at \_\_\_\_\_, Louisiana.

WITNESSES:

STATE OF LOUISIANA

\_\_\_\_\_  
FP&C Witness #1 Sign Here

BY: \_\_\_\_\_  
MARK A. MOSES, DIRECTOR  
FACILITY PLANNING & CONTROL  
DIVISION OF ADMINISTRATION

\_\_\_\_\_  
FP&C Witness #2 Sign Here

THUS DONE AND SIGNED, this \_\_\_\_\_ day of \_\_\_\_\_, 201<sup>9</sup>~~8~~,  
at \_\_\_\_\_, Louisiana.

WITNESSES:

CITY OF NEW ORLEANS

\_\_\_\_\_  
Entity Witness #1 Signature

BY: \_\_\_\_\_  
LATOYA CANTRELL  
MAYOR

\_\_\_\_\_  
Entity Witness #1 Printed Name

\_\_\_\_\_  
Entity Witness #2 Signature

\_\_\_\_\_  
Entity Witness #2 Printed Name

EXHIBIT A

COOPERATIVE ENDEAVOR AGREEMENT BETWEEN  
THE STATE OF LOUISIANA and  
CITY OF NEW ORLEANS  
New Sewerage and Water Board Power Plant, Planning and Construction  
(Orleans)  
FP&C Project No. 50-ML3-18-02

**COSTS AND FUNDS THIS AGREEMENT (\$):**

<b>COST CATEGORIES</b>	<b>CAPITAL OUTLAY CASH</b>	<b>NON-CASH LINE OF CREDIT</b>	<b>OTHER <sup>1</sup></b>	<b>TOTAL</b>
REAL ESTATE				
DESIGN				
•BASIC SERVICES			\$2,433,333	\$2,433,433
•MISCELLANEOUS				
CONSTRUCTION	\$2,270,000	\$5,000,000		\$7,270,000
EQUIPMENT				
ESCROW				
FP&C ADMIN	\$30,000			\$30,000
TOTAL COSTS	\$2,300,000	\$5,000,000	\$2,433,333	\$9,733,333

Federal Tax Identification No. for Entity: 72-6000969

1. Planning Costs shall not exceed 10% of Construction Costs. Miscellaneous Costs shall not exceed 5% of Construction Costs.
2. Capital Outlay Cash includes General Funds, NRP Bonds, Cash Line of Credit and/or Bonds sold.
3. Total in "Other" column equals required 25% match as reflected in Article XIX.
4. The estimated cost of construction is \$60,000,000.00 per the 2018-19 Capital Outlay Request.



**EXHIBIT B**

**COOPERATIVE ENDEAVOR AGREEMENT BETWEEN  
THE STATE OF LOUISIANA and  
CITY OF NEW ORLEANS  
New Sewerage and Water Board Power Plant, Planning and Construction  
(Orleans)  
FP&C Project No. 50-ML3-18-02**

**State of Louisiana-State Funding Summary**

<b>ACT #</b>	<b>YEAR</b>	<b>DESCRIPTION</b>	<b>STATE CASH</b>	<b>STATE NON-CASH LINE OF CREDIT</b>	<b>TOTAL STATE FUNDING</b>
29	2018	G.O. Bonds LOC	\$2,300,000	\$5,000,000	\$7,300,000
<b>TOTAL</b>			\$2,300,000	\$5,000,000	\$7,300,000